

EXHIBIT 5

CONFIDENTIAL FOR ATTORNEYS' EYES ONLY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

EASTERN DIVISION

REBECCA MCNEIL, BETH MACIOCE-

QUINN, EARLENE ROMINE, EDWARD

WRIGHT, BRANDI WELLS, AKEELA

BOWENS, AMELIA POWERS, CHAD

READOUT, JESSICA SHEETS, and

DERON LUNDY,

Plaintiffs,

-vs-

Case No. 2:20-cv-258

MOUNT CARMEL HEALTH SYSTEM,

TRINITY HEALTH CORPORATION,

and EDWARD LAMB,

Defendants.

DEPOSITION OF DANIEL ROTH, M.D.

July 22, 2022

Reported by: Pamela Mocerri

Job No. 214523

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3 A. I do.

4 Q. And what is his speciality?

5 A. Palliative care.

6 Q. So many patients from the ICU go to
7 palliative care afterwards; would that be fair?

8 A. Yeah. I mean define "many," but it's
9 not uncommon.

10 Q. Okay. "To develop an order set that
11 could be adopted as a policy and used as a
12 standard in these situations by all physicians
13 of the ICU."

14 So is it your knowledge that there
15 was an order set existing at that time for
16 palliative vent withdrawals that existed in the
17 Mount Carmel system?

18 A. There was.

19 Q. There was?

20 A. It's called a power plan.

21 Q. Was it mandatory?

22 A. It was not.

23 Q. Well, it seems that Dr. Ralston
24 didn't know that the order set was there because
25 he's talking about developing one.

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3 Do you know if he was aware of a
4 power plan that you say existed in the Mount
5 Carmel system for palliative vent withdrawal in
6 October and November of 2018?

7 A. I don't know what Dr. Ralston knew at
8 that time.

9 Q. Do you know if Dr. Swanner knew?

10 A. I don't know what Dr. Swanner knew on
11 November 26th.

12 Q. Do you know if there was a policy
13 that was in place for palliative vent
14 withdrawals that required the power plan be used
15 during the time of October and November of 2018
16 during palliative withdrawals at Mount Carmel?

17 A. I don't believe it was a policy that
18 mandated the use of the power plan on
19 November 26th, if that was your question.

20 Q. Yes, that is. Dr. Husel was
21 supportive of the concept and agreed he would be
22 part of a group that would draft such an order
23 set.

24 Do you know if Dr. Husel ever worked
25 with the group to draft such an order set?

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Q. Working with him to change his
prescribing habits.

A. I wasn't directly involved. I mean,
first of all, November 26th I didn't know about
it.

Q. During your investigation you said
this information was brought to you, correct?

A. After the fact.

Q. After the fact.

A. Yes.

Q. Did the investigation consider how
best to work with Dr. Husel to modify his
practice in order to make it more similar to
other physicians?

A. No, not that I remember.

Q. So it was never considered?

A. I mean I suppose it was considered.
Obviously it didn't win the day. I don't know
that I directly recall my notion of that
consideration specifically.

Q. Well, Dr. Husel was well liked by the
staff at this point in 2018, correct?

A. To my understanding. I mean, define

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3 "well liked."

4 Q. He was physician of the year in 2015;

5 is that correct?

6 A. Yes.

7 Q. And he was awarded physician of the

8 year in 2018 until it was withdrawn because of

9 these matters; isn't that correct?

10 A. I believe that's correct.

11 Q. So would you agree with me that he

12 was well liked if he's considered physician of

13 the year?

14 A. Sure.

15 Q. And there was no consideration of

16 working with him to bring him back; is that

17 correct?

18 A. That wasn't the final decision.

19 Q. Was there any consideration?

20 MR. O'SHEA: Object. Asked and

21 answered.

22 THE WITNESS: I don't think so.

23 BY MR. GRAFF:

24 Q. I'm going to turn your attention to a

25 document that's previously been identified as

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3 A. No, because once there -- you're
4 going to get to this -- but once there was a
5 consideration that it was potentially a crime,
6 that's outside of the scope of our
7 investigation. We don't do criminal
8 investigations.

9 Q. Wait a minute. We're still doing
10 inside the hospital.

11 A. But it's relevant.

12 Q. No, it -- well, we can talk about
13 that.

14 In your investigation on behalf of
15 the hospital, did anyone that provided the
16 clinical care to any of these patients at any
17 time, Dr. Husel, the nurses, the pharmacist tell
18 you they intended to hasten death?

19 A. Nobody told us they intended to
20 hasten patient death.

21 Q. And isn't it clear that they all
22 individually to the members said they did not?

23 A. To those that were interviewed, yes.
24 Not Dr. Husel to your point.

25 Q. Well, apparently he said it to

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3 Dr. Swanner.

4 A. Yeah, okay, fair enough.

5 Q. So that would be every person

6 involved said they didn't intend it; would that
7 be fair?

8 A. Yep.

9 Q. Did you consider that?

10 A. Yes.

11 Q. But you felt that that consideration
12 didn't outweigh your belief; would that be fair?

13 A. Belief as to what conclusion?

14 Q. As to what they did.

15 MR. O'SHEA: Objection. Are you
16 talking about what they did or what they
17 intended to do?

18 BY MR. GRAFF:

19 Q. Well, they all said they intended not
20 to hasten death, correct? Did you believe their
21 intent was not accurately portrayed?

22 A. Well, if I didn't believe it, right,
23 then that consideration is a criminal one,
24 right. Our investigation was not a criminal
25 investigation.

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3 MR. O'SHEA: You asked him whether

4 there the power plan was mandatory.

5 BY MR. GRAFF:

6 Q. Is there a maximum dose?

7 A. I'd be speculating. I'm not going to

8 speculate.

9 Q. Well, your testimony on the stand

10 under oath in Dr. Husel's trial was that in none

11 of the 88 hospitals there was a maximum dose for

12 palliative withdrawals. Are you changing that

13 testimony now?

14 A. That's not the question you asked, so

15 no. The answer to your question is no.

16 Q. Was there ever a maximum dose for

17 palliative vent withdrawals in any policy in any

18 one of your 88 hospitals during the relative

19 period of time of October and November of 2018?

20 A. Can you restate it more slowly,

21 please?

22 Q. Sure. Of all of your hospitals in

23 the Trinity system during October and November

24 of 2018 --

25 A. Yes.

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Q. -- was there any maximum dose for a palliative withdrawal?

A. No, I don't believe so. All of the hospitals, no.

Q. None of them?

A. No, that's correct.

Q. Not even in the Trinity power plan?

A. I don't know that that's true.

Q. Was there ever one prior?

A. I don't know the answer to that question.

Q. Is there one now?

A. There are order sets that provide ranges, and there are reviews if they are to be exceeding that. Does that answer your question?

Q. Yes. And those were part of the new policies and power plans that were put in either at the end of 2018 or the beginning of '19, right?

A. That's correct.

Q. But your testimony there was no maximum dose policy at that time for palliative withdrawals in October and November of '18?

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A. I'm not sure what you mean.

Q. When they had the conversation, did they come to some collaborative agreement?

A. Yeah. I mean the doses were given, so yeah.

Q. So were there any VOICE reports of concerns or adverse events against Dr. Husel about his prescribing in the ICU for palliative withdrawal prior to October of 2018?

A. There were no VOICE reports.

Q. Were there any reports by any management personnel of his prescribing of being a concern in the ICU during palliative extubations prior to October of 2018?

A. Management personnel?

Q. Anyone. Pharmacy?

A. Yes.

Q. And where would we find those?

A. There's an email from the pharmacy team at Mount Carmel West. June of 2018, if memory serves.

Q. And was Dr. Husel made aware of the concern?

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A. Not to my knowledge.

Q. Was pharmacy -- how did pharmacy react to that email?

A. Nobody reacted to that email. It was not by email. Not to my knowledge.

Q. What did the facility do?

A. Nobody responded to it so nothing happened.

Q. So Dr. Husel was sent that email?

A. No.

Q. So how would Dr. Husel know?

A. Your question was --

Q. I understand that. How would Dr. Husel know?

A. He would not. That wasn't your question.

Q. Did anyone talk to Dr. Husel about it?

A. No. Prior to November 26th, no.

Q. Prior to November the 26th.

A. No.

Q. So he would have no knowledge that there was a concern raised; would that be fair?

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Carmel versus the criminal process?

BY MR. GRAFF:

Q. Which experts did you consult, how's that, as part of your investigation?

A. So we worked with -- well, a few. So one is Dr. Tocco-Bradley. We already talked about Dr. Moody, Dr. Ralston, then we used an outside group.

Q. And who was that?

A. The outside group?

Q. Yes.

A. Can I answer that?

MR. O'SHEA: You can answer.

THE WITNESS: Greeley.

BY MR. GRAFF:

Q. Tocco-Bradley, Greeley.

A. Ralston, Moody, Tocco-Bradley, Greeley.

Q. Sorry.

A. You're good.

Q. Would you agree with me that that standard of care is very patient specific?

A. Yeah.

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setting, because I wear a number of hats in this chair.

Q. Trinity.

A. Okay.

Q. When did Trinity higher an outside communications company?

A. So Trinity hired Jarrard, I want to say, it was in the middle of December.

Q. Did you ask Bret Gallaway to get a relationship begun with Jarrard?

A. Yes. I don't know that I personally did, but again, I'm saying what "you" means.

Q. I'm kind of using the royal "we."

A. The royal "we" did.

Q. And that's really Jarrard, Phillips, Kate and Hancock, correct?

A. Yes.

Q. We'll just call them Jarrard.

A. Thank you.

Q. Had you previously worked with Jarrard?

A. I had not.

Q. Do you know if Mount Carmel had

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BY MR. GRAFF:

Q. Have you seen this document before?

A. Yes.

Q. Have you seen this spreadsheet that was attached to it?

A. I'm sorry.

Q. Probably not in that form, or you may have, I don't know.

A. I don't know that I've seen this one before.

Q. For the record, I will --

A. Go ahead, I'm sorry.

Q. I will posit that Dr. Tocco-Bradley notified us that that was a document that she made.

A. I have no reason to doubt that.

Q. Okay. When were you provided Exhibit 16, do you know?

A. Somewhere around the spring of 2022.

Q. You never saw it when it was done in 2018?

A. Correct.

Q. Now, it has on here Mandi Murray,

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Rick Streck, Tammy Lundstrom. That was not provided to you at that time, to the best of your knowledge?

A. Correct. It may have been late in 2021, but not at that time.

Q. Was this not used as part of your investigation?

A. Because I didn't know about it, it couldn't have been used.

Q. So do you know of anyone who was part of the investigation -- I thought Dr. Lundstrom, Dr. Streck, and I don't know about Mandi Murray were part of the investigation, they didn't bring this information --

A. Correct.

Q. -- to the committee for its review?

A. Correct.

Q. It would seem to me that that would be a very critical, significant loss for Dr. Tocco-Bradley's report not to be made available to the committee.

Can you think of any reason why either Dr. Lundstrom or Dr. Streck would hold it

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3 Q. When was the first time that you met
4 with Ronald Ryan, the Franklin County
5 prosecutor, and his staff?

6 A. It was -- I'll just look it up.
7 December 17th.

8 Q. Were you physically in Columbus at
9 that time?

10 A. Yes.

11 Q. Is that about the time you started --

12 A. Yes, that the first week.

13 MR. LANDY: Finish that question.

14 BY MR. GRAFF:

15 Q. Spending significant time in
16 Columbus?

17 A. Yes, that was the first time I came
18 down, as a matter of fact.

19 Q. And you met with yourself, general
20 counsel for Mount Carmel; that would be Dan
21 Hackett?

22 A. That's correct.

23 Q. Your outside counsel; that would be
24 Greg Peterson?

25 A. That's correct.

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3 Q. Who is the VP of strategy and
4 planning?

5 A. Brett Justice.

6 Q. Is there a reason why your
7 communications or strategy person would have met
8 with the police on such a matter?

9 A. Yes.

10 Q. What would that be?

11 A. So one of the main reasons if not the
12 primary reason why we went was we, "we"
13 Mount Carmel and Trinity right, were desirous of
14 disclosing what we had discovered so far to the
15 family members. The police department and the
16 prosecutors' office had asked us to not do that
17 until they may have had the opportunity or
18 figured out if they wanted to interview the
19 family members or not, and so we didn't want to
20 do that and run afoul of their direction or
21 interfere with their work, so we were mostly
22 seeking to establish a timeline in which we
23 could have those conversations with the family
24 members.

25 Q. Now, you decided to meet with the

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prosecutor. How long were you there?

A. I think about an hour.

Q. Did they give you details of where they had already done their interviews and had completed them? What happened? You tell us.

A. My recollection of what happened is we had a conversation about work we were doing, you know, to expand on trying to understand how many people were impacted, one. The gist of or the thrust of the meeting was what we would tell family members, why we were desirous of telling family members, and I think they shared some of what they had heard through the investigation to that point at a very high level, not in any specific detail, down to the patient -- or I'm sorry, the colleague or interviewee level.

Q. Did they approve or at least acquiesce in your contacting family members?

A. Yes.

Q. Were you permitted to tell family members that there was an investigation being conducted by the prosecutor?

A. I think so. I know at some point,

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Q. So that 3500 was a very unique

patient even in your scenario and mine?

A. Every patient is unique because

that's the point.

Q. And 500 would be appropriate for

certain patients, 500 micrograms would be

appropriate for some patients looking at that

specific patient?

A. And excessive for others.

Q. And 200 would be excessive for some

and reasonable for others, correct?

A. Yes.

Q. So that when you look at these

patients, they can't be looked at in an

aggregate; they must be looked at only on an

individual basis; is that correct?

A. And in point of fact, right, we

identified in report 5, right, a number of

patients who were between 200 and 400 micrograms

and was case by case, and some we felt like were

not excessive and some we felt were.

Q. So there is no number of 500 that

defines a medical standard that is

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Q. By January the 7th?

A. Yeah.

Q. We've identified every patient as of
the 19th of December, have we not?

A. Correct.

Q. We had notified every family member
by January -- sorry, December the 27th, correct?

A. Of the ones that had been identified
up to that point in time, that's correct.

Q. Including 27 at that point.

A. I think that's right.

Q. And then there was a secondary
notification to those families in early January
and I think it was actually before this, but
we'll look at that document.

A. When we had a second conversation
with the families?

Q. Yes.

A. Yeah, it's the second Monday in
January.

Q. So it really was Ed Lamb who was the
first person that says let's not call these
doses fatal, according to what we have in our

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documents; is that fair?

MR. O'SHEA: Objection. That mischaracterizes this very exhibit, but you can answer.

THE WITNESS: So the email is the first time in this email thread that the question is raised.

BY MR. GRAFF:

Q. Then we have at the top of the first page from Fred Gallaway to you, to Ed Lamb, to the entire leadership team for this investigation; would that be fair?

A. Well, the bulk of it.

Q. "Thanks, Ed. Dan and I discussed it this morning." Would that be you and Bret Gallaway?

A. Yes.

Q. "Of the 27 cases, we are confident that the doses were fatal." That's a conversation from you, correct?

A. That's what he says.

Q. Is it accurately recorded or not?

A. No, I don't think so.

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Q. Did you ever write back saying, no, that's not true?

A. Not that I recall.

Q. So "fatal in 17 of the cases. Since that's more than half, we can say "most." If pressed by a reporter, we could say that the number is at least 14."

This is your organization. This is a critical part, and we're talking about that charged word of "fatal," and I don't see a response from you.

Did you make no response? Did you be part of this conversation?

A. I did. It doesn't mean that it's not reflected because it's not in the email. I'm certain that there were many conversations about potentially fatal versus fatal and I would go back to what we said publicly.

Q. Now, I would argue that these people were quite disparate in where they were working at that time on January 8th; isn't that true? Some were in Michigan. Some were in Ohio.

A. Yes.

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A. Let me start over again because I wasn't clear and I apologize.

So we identified a small number of people, ultimately five, for whom all the potential things that could have been done to potentially reverse their short-term situation weren't undertaken prior to having the conversations with the family members where they were told there was no chance of recovery.

One of those patients at least, but one of those patients had undergone a procedure, and we believe that they had a complication of that procedure, and so one of the five was related to a procedure at least, but the five is a broader number. Was that clear?

Q. I'm trying to figure out. So one had a complication, but it wasn't rectified but you believe could have been?

A. Nothing's guaranteed, right, in critical care, but there were potential options that weren't undertaken, correct.

Q. Do you know who those five patients are?

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3 A. Yes, I believe so.

4 Q. Who are they?

5 A. Can I answer this?

6 MR. O'SHEA: Yes. This will be

7 confidential.

8 THE WITNESS: Okay. Yes, includes

9 patients names I'm about to say, and I have

10 to make sure I get this right.

11 BY MR. GRAFF:

12 Q. And those five are?

13 A. [REDACTED]

14 [REDACTED]. I'm blanking on the heart attack

15 patient. I don't remember.

16 MR. LANDY: Just for the record is

17 that [REDACTED]?

18 THE WITNESS: Yes, thank you. Those

19 are the three I remember off the top of my

20 head.

21 BY MR. GRAFF:

22 Q. Is there a list you put together or a

23 report for Dr. Gilfillan?

24 A. No.

25 Q. Where would we find those names

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reflected in your investigation?

A. I don't think they're specifically
recorded.

Q. How would anyone know what five
patients you were talking about?

A. We weren't sharing individual patient
names with the public, right, so we never told
the public individual patient names, so for the
purposes of this, we weren't prepared nor did we
share the specific five patients involved.

Q. Did you share it with the family
members?

A. Yes.

Q. So at some time after --

A. It's my understanding, yes.

Q. Did you make those calls?

A. No.

Q. Do you know who made those calls?

A. Do not.

Q. Was there a script developed for
those calls?

A. I don't remember.

Q. I mean, I've not seen it.

A. Go ahead, I'm sorry. Yes.

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

EASTERN DIVISION

REBECCA MCNEIL, BETH MACIOCE-

QUINN, EARLENE ROMINE, EDWARD

WRIGHT, BRANDI WELLS, AKEELA

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READOUT, JESSICA SHEETS, and

DERON LUNDY,

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-vs-

Case No. 2:20-cv-258

VOLUME II

MOUNT CARMEL HEALTH SYSTEM,

TRINITY HEALTH CORPORATION,

and EDWARD LAMB,

Defendants.

_____/

CONTINUED DEPOSITION OF DANIEL ROTH, M.D.

AUGUST 1, 2022

Reported by: Pamela Mocerì

Job #: 214948

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Q. Raina -- and I'm going to probably butcher her last name -- Vretenar, 6-0 vote in favor of not terminating the employee; it says you were absent. Once again, I presume you were not there for the discussion?

A. Correct.

Q. It says you were not there for the vote, but do you know if she was terminated or not?

A. According to the notes, she was not terminated.

Q. Akeela Bowers, 7-0 in favor of not terminating the employee. Then presumably you were there for that vote?

A. Correct.

Q. Do you recall the discussion?

A. Vaguely.

Q. Do you know if Akeela Bowers was terminated?

A. She was not.

Q. Beth Macioce-Quinn, 7-0 in favor of not terminating the employee.

Presumably you were there for the

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discussion. Do you recall the discussion.

A. Vaguely.

Q. Do you know if she was terminated?

A. She was not.

Q. Andrew Caputo, pharmacist, 6-1 in favor of termination. Do you recall the discussion?

A. Vaguely.

Q. Do you know who the one person in favor of not terminating Mr. Caputo was?

A. I do not.

Q. I presume that means it wasn't you?

A. I don't recall. If I recalled, I would have said.

Q. Do you know if Mr. Caputo was terminated?

A. He was according to the notes.

Q. Jonathan Vang, 6-0 in favor of termination. You were absent. Again I will ask your recall of the discussion.

A. I do not have a recall. I was absent.

Q. Or of the vote because you were

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not terminated in relation to his actions of
prescribing or administering -- not prescribing.

Let me rephrase that question.

Do you know if Damian Gonzalez was
not terminated in relation to his administration
or actions related to the prescribing of
Dr. Husel?

A. That is correct, to the best of my
knowledge.

Q. Nicole Pavlick, pharmacist, 7-0 in
favor of not terminating. Presumably you have
no separate recollection of this discussion
either?

A. Not specific to this particular
colleague, no.

Q. Apparently you voted in favor of not
terminating her. Would that be correct?

A. Seems to be correct, that's right.

Q. And to the best of your knowledge,
she was not terminated in relation to her
actions about Dr. Husel; is that correct?

A. Correct.

Q. Jessica Sheets. This is a registered

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nurse. It's a 5-0 in favor of not terminating.

Once again, this is a different vote

than what we have seen before. It shows that

all seven must -- should have been present

because it doesn't show either an abstention or

someone missing from the vote.

Do you have any recollection why this
vote is 5-0 in favor of not terminating?

A. I do not have any specific
recollection as to this specific vote.

Q. I have to ask again. Are there any
documents that we would be able to look at?

A. Not to the best of my knowledge.

Q. Do you know if Jessica Sheets was
terminated for her relationships with -- for her
actions in relation to the administration of
medication of Dr. Husel?

A. She was not.

Q. Thien-Khanh Pantelis, pharmacist.
Once again, it shows a 6-0 vote in favor of not
terminating.

Do you have any separate recollection
of this pharmacist?

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A. Not to the best of my knowledge.

Q. Do you know if Mr. Cheng was terminated in relation to his actions regarding the prescriptions that were used or his relationship with Dr. Husel?

A. He was not.

Q. Brandi Wells, registered nurse, 5-0 in favor of not terminating.

Do you recall the discussion about Ms. Wells?

A. I do not specifically.

Q. Do you know why the vote is 5-0 without showing any abstentions or any people absent from the vote?

A. I do not.

Q. Do you have -- is there any document that would give us that information?

A. Not to my knowledge.

Q. Do you know if Ms. Wells was terminated in relationship to her administration of medications regarding Dr. Husel?

A. She was not.

Q. Andrea Shaffer, 5 in favor of not

C E R T I F I C A T E

I, PAMELA MOCERI, Certified Shorthand Reporter and Notary Public, hereby certify that this deposition was taken before me on the date hereinbefore set forth; that the foregoing questions and answers were recorded by me stenographically and reduced to computer transcription; that this is a true, full, and correct transcript of my stenographic notes so taken; and that I am not related, nor of counsel, to either party, nor interested in the event of this cause.

Dated: August 15, 2022

Pamela Mocerì
Pamela Mocerì, CSR